

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Certificates of
Authority of American Family Mutual
Insurance Company, American Standard
Insurance Company of Wisconsin,
American Family Life Insurance
Company, Wisconsin corporations, doing
business in the State of Minnesota

**ORDER ON
JUDICIAL NOTICE**

By a written Motion filed on March 31, 1997, the Respondent sought an Order allowing judicial notice to be taken of agent Mary McClure's appointment with another insurance company. The Department of Commerce replied to the Motion on April 10, 1997. A written response was filed by the Respondent on April 16, 1997.

The Respondent, American Family Insurance Companies, was represented by Cory J. Ayling, Esq., and Kathleen M. Brennan, Esq. of the firm of McGrann, Shea, Franzen, Carnival, Straughn & Lamb, 2200 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, Minnesota 55402-2041. The Department of Commerce was represented by Joan C. Peterson, Assistant Attorney General, Michael A. Sindt, Assistant Attorney General, and Gregory Gisvold, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

Based upon the filings by the parties, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED that:

1. Judicial notice shall be taken of the license history for Mary McClure issued by the Minnesota Department of Commerce.
2. The Department of Commerce shall obtain an affidavit from John Alden Life Insurance Company which verifies whether or not Mary McClure held an appointment as an agent with that company and if so, the appointment date and the cancel date.

3. The John Alden affidavit shall be filed with the Administrative Law Judge and the Respondent on or before May 16, 1997, and shall be entered as an exhibit in this proceeding.

Dated this 30th day of April 1997.

GEORGE A. BECK
Administrative Law Judge

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MEMORANDUM

The Respondent's Motion asks that judicial notice be taken of the appointment of insurance agent Mary McClure with the John Alden Life Insurance Company as is reflected on a list of insurance agent company appointments for Mary McClure issued by the Minnesota Department of Commerce. The Respondent also seeks inclusion in the record of the license history issued by the Minnesota Department of Commerce for Mary McClure. The Department does not oppose including the license history and judicial notice can be taken of that document. It is included as an exhibit in this proceeding.

Although the Department does not object to including the license history, it does object to including the list of appointments on the grounds that the data may not be reliable. The Department states that it receives approximately 54,000 new appointments and many more cancellations of appointments each year for inclusion in its records. These items are entered into the Department's data base by data entry staff and carry a low priority designation. Therefore, it suggests that errors often occur and it has pointed out errors in dates in the document referenced by the Respondent.

Judicial notice of a fact is appropriate where the fact is "not subject to reasonable dispute." Minn. Rule Ev. 201(b). A fact is not subject to reasonable dispute if (1) it is generally known, or if (2) it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." It appears there is some doubt as to the accuracy of the document listing Ms. McClure's appointments. Whether or not she was appointed by John Alden Life Insurance Company, however, is capable of accurate and ready determination. The Department is therefore directed to obtain an affidavit from John Alden Life Insurance Company to establish what their records show as to Ms. McClure's appointment and the relevant dates. This affidavit will be entered as an exhibit in this proceeding since its accuracy cannot reasonably be questioned.

Although the Department indicates that it is prejudiced because it cannot question Ms. McClure concerning this information, the appointment is a fact which is either true or not true. The Department also contests the relevancy of the information sought to be included in the record. Since the information may have some relevancy, it is appropriate to include it as an exhibit and allow the parties to argue whether it is, in fact, meaningful or persuasive evidence.

G.A.B.